

PILLSBURY WINTHROP SHAW PITTMAN LLP  
REYNOLD L. SIEMENS #177956

Email: [reynold.siemens@pillsburylaw.com](mailto:reynold.siemens@pillsburylaw.com)

725 South Figueroa Street, Suite 2800

Los Angeles, CA 90017-5406

Telephone: (213) 488-7100

Facsimile: (213) 629-1033

PILLSBURY WINTHROP SHAW PITTMAN LLP  
BRUCE A. ERICSON #76342

Email: [bruce.ericson@pillsburylaw.com](mailto:bruce.ericson@pillsburylaw.com)

MARLEY DEGNER #251923

Email: [marley.degner@pillsburylaw.com](mailto:marley.degner@pillsburylaw.com)

50 Fremont Street, Post Office Box 7880

San Francisco, CA 94120-7880

Telephone: (415) 983-1000

Facsimile: (415) 983-1200

Attorneys for Defendant ROBERT JOHN BURRELL

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

NATIONAL CREDIT UNION  
ADMINISTRATION BOARD AS  
LIQUIDATING AGENT FOR WESTERN  
CORPORATE FEDERAL CREDIT UNION,

Plaintiff,

vs.

ROBERT A. SIRAVO, et al.,

Defendants.

AND RELATED COUNTERCLAIMS

No. CV 10-01597 GW (MANx)

**[CORRECTED] INITIAL  
DISCLOSURES OF  
DEFENDANT ROBERT  
JOHN BURRELL**

**[FED. R. CIV. P. 26(a)(1)]**

Judge: Hon. George Wu

1                   **INTRODUCTION AND PRELIMINARY STATEMENT**

2           Defendant **ROBERT JOHN BURRELL** (“Burrell”) provides the  
3 following [corrected] initial disclosures pursuant to Rule 26(a)(1) of the  
4 Federal Rules of Civil Procedure and the Court’s minutes of scheduling  
5 conference, Doc. 169. The corrections modify (slightly) the version filed  
6 (twice) as Doc. 177 and 178.

7           These initial disclosures pertain both to the Second Amended  
8 Complaint, Doc. 116 (“SAC”) filed by the plaintiff, National Credit Union  
9 Administration Board, as Liquidating Agent for Western Corporate Federal  
10 Credit Union (“NCUA”), and Burrell’s Answer and Counterclaims, Doc. 157  
11 (“Counterclaims”).

12           Burrell’s investigation and discovery in this action is continuing; these  
13 disclosures reflect only the current status of Burrell’s investigation and  
14 discovery. Burrell reserves the right to supplement or amend his disclosures  
15 (either voluntarily or pursuant to Rule 26(e)(1), or both) as additional  
16 information becomes known to him through discovery or other means.

17           Burrell construes the requirements of Rule 26(a) as not requiring the  
18 production of information protected by the attorney-client privilege, the  
19 attorney work product doctrine, or any applicable privileges. Burrell intends  
20 to assert and hereby asserts any and all such privileges. Any disclosure of  
21 such information in these disclosures is inadvertent and does not constitute a  
22 waiver of such privileges.

23           By making these disclosures, Burrell does not concede that the  
24 disclosed information is relevant or admissible as evidence at trial, and he  
25 reserves the right to assert any and all evidentiary and other objections.  
26  
27  
28

1           **I.       INDIVIDUALS LIKELY TO HAVE DISCOVERABLE**  
2                   **INFORMATION BURRELL MAY USE TO SUPPORT HIS**  
3                   **DEFENSES OR HIS COUNTERCLAIMS**

4           Pursuant to Rule 26(a)(1)(A)(i) of the Federal Rules of Civil Procedure,  
5 Burrell states that he is informed and believes that the following individuals  
6 are likely to have discoverable information that he may wish to use to support  
7 his defenses to the SAC's First Claim and/or his Counterclaims:

8           **A.       Former WesCorp directors, officers and employees**

9           1.       Defendant Burrell, EVP / Chief Investment Officer. Address:  
10 c/o his attorney of record, the undersigned. Subjects: WesCorp's investments,  
11 investment strategies, and investment policies and procedures; information  
12 provided to WesCorp's Board of Directors, Board committees, and the ALCO  
13 and the ALSC about WesCorp's investments, investment strategies, and  
14 investment related policies and procedures; the activities of the ALCO and the  
15 ALSC; and the activities of the Investment Department; division of functions  
16 as between WesCorp's various departments, especially as between the  
17 Investment Department and Investment Credit Services Department.

18          2.       Defendant Bob Siravo, former President / CEO. Address: c/o his  
19 counsel. Subjects: Most aspects of the case, but especially the budget  
20 process, his activities as CEO/President of WesCorp, WesCorp's investments,  
21 investment strategies, and investment related policies and procedures,  
22 information provided to WesCorp's Board of Directors, Board committees,  
23 and the ALCO and the ALSC about WesCorp's investments, investment  
24 strategies, and investment related policies and procedures; the activities of the  
25 ALCO and ALSC; communications with the NCUA, among other subjects.

26          3.       Defendant Todd Lane, former EVP / CFO. Address: c/o his  
27 counsel. Subjects: Most aspects of the case, but especially the budget  
28

1 process, through 2008; Lane's activities as EVP/CFO of WesCorp; WesCorp's  
2 investments, investment strategies, and investment related policies and  
3 procedures; information provided to WesCorp's Board of Directors, Board  
4 committees, and the ALCO and the ALSC about WesCorp's investments,  
5 investment strategies, and investment related policies and procedures; the  
6 activities of the ALCO and ALSC; communications with the NCUA, among  
7 other subjects.

8 4. Defendant Tim Sidley, VP / Chief Risk Officer. Address: c/o his  
9 counsel. Subjects: Most aspects of the case, but especially risk assessment  
10 and credit analysis and credit approval of proposed purchases of securities.  
11 Sidley may have information about information about WesCorp's investments,  
12 investment strategies, and investment related policies and procedures;  
13 information provided to WesCorp's Board of Directors, Board committees,  
14 and the ALCO and the ALSC about WesCorp's investments, investment  
15 strategies, and investment related policies and procedures; the activities of the  
16 ALCO and the ALSC; and the activities of Investment Credit Services.

17 5. Defendant Tom Swedberg, VP - Strategic Planning, retired in  
18 2008 - former VP, Human Resources. Address: c/o his counsel. Subjects:  
19 His activities as a WesCorp officer.

20 6. Jim Hayes, SVP / CFO, 2008-09. Address unknown (currently  
21 officer of Andrews Air Force Base Credit Union). Subjects: WesCorp's  
22 business model from the perspective of one who was the former resident  
23 NCUA examiner at WesCorp through January 2003; budget process, 2008-09;  
24 ALSC; NCUA's examinations and oversight of WesCorp and NCUA's  
25 thoughts about WesCorp's investments; SAC ¶¶ 44-51, 61; information  
26 provided to WesCorp's Board of Directors, Board committees, and the ALCO  
27 and the ALSC about WesCorp's investments, investment strategies, and  
28

1 investment related policies and procedures; the activities of the ALCO and  
2 ALSC.

3 7. Russ Douglass, Director - Balance Sheet Management. Address  
4 unknown. Subjects: WesCorp's balance sheet plan.

5 8. Laura Cloherty, VP – Controller. Ran Finance & Administration.  
6 Address unknown. Subjects: Budgets, finance, financial planning and  
7 accounting.

8 9. Janet Weston, Director Financial Planning. Address unknown.  
9 Subjects: Budgets, finance, financial planning and accounting.

10 10. Tom Tam, VP- Enterprise Risk Management. Address unknown.  
11 Subjects: Enterprise risk management at WesCorp.

12 11. Jeb Burbott, VP - General Counsel. Address unknown. Subjects:  
13 CUMIS Insurance Policy; Counterclaims.

14 12. Sheri Ledbetter, VP - Corporate Affairs. Address unknown.  
15 Subjects: Liaison with officers and internal communications.

16 13. Pat Patterson, VP - Corporate Administration. Address unknown.  
17 Subjects: Functioning of senior executives and Executive Team and liaison  
18 with WesCorp Officials and the NCUA through 2007.

19 14. David Trinder, VP - Balance Sheet Management. Address  
20 unknown. Subjects: Balance sheet strategy and planning; investment  
21 strategy; ALM modeling; coordination of liquidity and investment spread  
22 inputs and assembly of balance sheet plan; updates to balance sheet  
23 management policies; information provided to WesCorp's Board of Directors,  
24 the ALCO and ALSC: the activities of the ALCO and ALSC; creation of  
25 ALCO books.

26 15. Jeff Hamilton, VP - Portfolio Management. Address unknown.  
27 Subjects: Investment strategy; investment spreads inputs to balance sheet  
28

1 plan; information provided to WesCorp's Board of Directors, the ALCO and  
2 ALSC; the activities of the ALCO and ALSC.

3 16. Dietmar Huesch, VP - Treasury & Funding. Address unknown.  
4 Subjects: Funding and leverage strategy; liquidity inputs to balance sheet  
5 plan; information provided to WesCorp's Board of Directors, the ALCO and  
6 ALSC; the activities of the ALCO and ALSC.

7 17. Dwight Johnston, VP - Economic & Market Research. Address  
8 unknown. Subjects: Monitoring of economic, investment and financial  
9 market conditions; authored some economic reports included in ALCO books.

10 18. Jeremy Calva, VP - Investment Operations. Address unknown.  
11 Subjects: Assisted Finance with collection of security valuations; coordinated  
12 planning process for investments.

13 19. Barrie French, Sr. Portfolio Manager. Address unknown.  
14 Subjects: Investment purchase activities and pre-purchase analysis.

15 20. Kathy Gensler, Sr. Portfolio Manager. Address unknown.  
16 Subjects: Investment purchase activities and pre-purchase analysis.

17 21. Bill Eberhardt, Sr. Director - Investment Credit Operations.  
18 Address unknown. Subjects: Investment pre-purchase credit review, credit  
19 approval and ongoing credit surveillance; information provided to WesCorp's  
20 Board of Directors, the ALCO and ALSC; development and maintenance of  
21 credit policies and concentration limits.

22 22. Ketty Cheng, Sr. Director - Investment Credit Operations.  
23 Address unknown. Subjects: Same as Eberhardt (his successor in 2008).

24 23. Peter Lin, Senior Credit Analyst. Address unknown. Subjects:  
25 Investment pre-purchase credit review, credit approval and ongoing credit  
26 surveillance.

27 24. Steve Rickert, Senior Credit Analyst. Address unknown.  
28

1 Subjects: Investment pre-purchase credit review, credit approval and ongoing  
2 credit surveillance.

3 25. Paul Schulten, Credit Analyst. Address unknown. Subjects:  
4 Investment pre-purchase credit review, credit approval and ongoing credit  
5 surveillance.

6 26. Julia Xue, Credit Analyst. Address unknown. Subjects  
7 Investment pre-purchase credit review, credit approval and ongoing credit  
8 surveillance.

9 27. Steve Waddell, Sr. Director - Chief Interest Rate Risk Officer,  
10 Address unknown. Subjects: Interest rate and liquidity risk reporting.

11 28. Baoho Chang, Sr. Director - Chief Interest Rate Risk Officer.  
12 Address unknown. Subjects: Interest rate and liquidity risk reporting through  
13 February 2007.

14 29. Jason Thomas, Director - Funding & Hedging. Address  
15 unknown. Subjects: Funding and liquidity management.

16 30. Debby Munoz, Director of Internal Audit. Address unknown.  
17 Subjects: Internal auditing and risk management.

18 31. Dick Johnson, former CEO of WesCorp (pre-2002). Address  
19 unknown. Subjects: Transformation of WesCorp's business plan after 2002.

20 32. All directors and members of the Supervisory Committee of  
21 WesCorp during whatever period is covered by the SAC, at least 2002-2009.  
22 Addresses: c/o their counsel, the undersigned. Subjects: Information  
23 provided to WesCorp's Board and Board Committees; authorizations to  
24 management provided by WesCorp's Board and Board Committees;  
25 information provided to WesCorp's Board of Directors, Board committees,  
26 and the ALCO and the ALSC; the activities of the ALCO and the ALSC;  
27 WesCorp's investments, investment strategies, and investment-related policies  
28



1 and procedures.

2 **B. NCUA personnel**

3 1. Debra Matz, Current Chairman, NCUA; NCUA Board member  
4 from January 2002 through October 2005. Address: c/o NCUA's counsel.  
5 Subjects: NCUA's admissions; contemporaneous assessment of credit and  
6 other risks associated with mortgage-backed securities, both "agency" and  
7 "private label"; concentration and diversification of assets; NCUA's  
8 examinations and oversight of WesCorp; Counterclaims.

9 2. Gigi Hyland, NCUA Board member since November 2005.  
10 Formerly General Counsel for Empire Corporate. Address: c/o NCUA's  
11 counsel. Subjects: NCUA's admissions; contemporaneous assessment of  
12 credit and other risks associated with mortgage-backed securities, both  
13 "agency" and "private label"; concentration and diversification of assets;  
14 NCUA's examinations and oversight of WesCorp; Counterclaims.

15 3. Dave Marquis, Executive Director, NCUA, head staffer.  
16 Address: c/o NCUA's counsel. Subjects: NCUA's admissions;  
17 contemporaneous assessment of credit and other risks associated with  
18 mortgage-backed securities, both "agency" and "private label"; concentration  
19 and diversification of assets; NCUA's examinations and oversight of  
20 WesCorp; Counterclaims.

21 4. Bob Fenner, General Counsel, NCUA until July 2011. Address:  
22 c/o NCUA's counsel. Subjects: NCUA's admissions; contemporaneous  
23 assessment of credit and other risks associated with mortgage-backed  
24 securities, both "agency" and "private label"; concentration and diversification  
25 of assets; NCUA's examinations and oversight of WesCorp; Counterclaims.

26 5. Scott Hunt, Director of NCUA's Corporate Credit Unions  
27 ("OCCU"). Took over OCCU in late 2008. Address: c/o NCUA's counsel.



1 Subjects: NCUA's admissions; contemporaneous assessment of credit and  
2 other risks associated with mortgage-backed securities, both "agency" and  
3 "private label"; concentration and diversification of assets; NCUA's  
4 examinations and oversight of WesCorp; Counterclaims.

5 6. Kent Buckham, Director, NCUA's Office of Consumer  
6 Protection; Director, OCCU until late 2008. Address: c/o NCUA's counsel.  
7 Subjects: NCUA's admissions; contemporaneous assessment of credit and  
8 other risks associated with mortgage-backed securities, both "agency" and  
9 "private label"; concentration and diversification of assets; NCUA's  
10 examinations and oversight of WesCorp; Counterclaims.

11 7. Owen Cole, Director, Office of Capital Markets. Address: c/o  
12 NCUA's counsel. Subjects: NCUA's admissions; contemporaneous  
13 assessment of credit and other risks associated with mortgage-backed  
14 securities, both "agency" and "private label"; concentration and diversification  
15 of assets; NCUA's examinations and oversight of WesCorp; Counterclaims.

16 8. Dan Buckley, Corporate Field Supervisor. WesCorp was in  
17 Buckley's region starting 2007. Address: c/o NCUA's counsel. Subjects:  
18 NCUA's admissions; contemporaneous assessment of credit and other risks  
19 associated with mortgage-backed securities, both "agency" and "private  
20 label"; concentration and diversification of assets; NCUA's examinations and  
21 oversight of WesCorp; Counterclaims.

22 9. Bruce Bakke, Corporate Field Supervisor, WesCorp was in  
23 Bakke's region through 2006. Address: c/o NCUA's counsel. Subjects:  
24 NCUA's admissions; contemporaneous assessment of credit and other risks  
25 associated with mortgage-backed securities, both "agency" and "private  
26 label"; concentration and diversification of assets; NCUA's examinations and  
27 oversight of WesCorp; Counterclaims.

28

1           10.   Joe Shoshoo, Capital Markets Specialist, Resident Examiner,  
2   2007-09. Address: c/o NCUA's counsel. Subjects: NCUA's admissions;  
3   contemporaneous assessment of credit and other risks associated with  
4   mortgage-backed securities, both "agency" and "private label"; concentration  
5   and diversification of assets; NCUA's examinations and oversight of  
6   WesCorp; Counterclaims.

7           11.   Lance McAllister, Capital Markets Specialist, Resident Examiner,  
8   retired at end of 2006. Address: c/o NCUA's counsel. Subjects: NCUA's  
9   admissions; contemporaneous assessment of credit and other risks associated  
10   with mortgage-backed securities, both "agency" and "private label";  
11   concentration and diversification of assets; NCUA's examinations and  
12   oversight of WesCorp; Counterclaims.

13          12.   Steve Sherrod, Director, Capital Markets Division, Left at end of  
14   2008 - oversaw credit regulations and worked on examinations. Address: c/o  
15   NCUA's counsel (currently Chief Economist at CFTC). Subjects: NCUA's  
16   admissions; contemporaneous assessment of credit and other risks associated  
17   with mortgage-backed securities, both "agency" and "private label";  
18   concentration and diversification of assets; NCUA's examinations and  
19   oversight of WesCorp; Counterclaims.

20          13.   Dan Gordon, Asst. Director, Capital Markets Division, NCUA,  
21   retired in 2006. Address: c/o NCUA's counsel. Subjects: NCUA's  
22   admissions; contemporaneous assessment of credit and other risks associated  
23   with mortgage-backed securities, both "agency" and "private label";  
24   concentration and diversification of assets; NCUA's examinations and  
25   oversight of WesCorp; Counterclaims.

26          14.   Michael Fryzel, National Credit Union Administration, 1775  
27   Duke Street, Alexandria, VA 22314-3428, telephone: 703-518-6300.

28

1 Subjects: NCUA's knowledge and approval of MBS investments by corporate  
2 credit unions.

3 **C. Personnel from ratings agencies and outside counsel**

4 1. Blaine Frantz, SVP, Moody's, Head Financial Institutions  
5 Ratings. Primary Analyst of WesCorp. Subjects: Third-party assessment of  
6 WesCorp's investment strategy and procedures and risk management.

7 2. Bob Hoban, VP, Financial Institutions Ratings, Standard &  
8 Poor's. Primary Analyst from 2006. Subjects: Third-party assessment of  
9 WesCorp's investment strategy and procedures and risk management.

10 3. Jonathon Ukeiley, Director Financial Institutions Ratings,  
11 Standard & Poor's. Subjects: Third-party assessment of WesCorp's  
12 investment strategy and procedures and risk management.

13 4. Joe Sturtevant, SVP & Co-Founder, RiskSpan, Inc. Subjects:  
14 Security valuations starting November 2007.

15 5. Randy Moore, Partner, Moore, Brewer & Burbott APC, 4180 La  
16 Jolla Village Dr. #540, La Jolla, CA 92037, telephone: (858) 626-2881.  
17 Subjects: If, but only if, Burrell decides to advance an advice-of-counsel  
18 defense (and Burrell has not yet made any such decision), Moore might have  
19 information relevant to such a defense.

20 **D. Representatives of other major corporate credit unions**

21 1. Francis Lee, President / CEO, US Central Credit Union. Address  
22 unknown. Subjects: Business practices at corporate credit unions; NCUA  
23 supervision of corporate credit unions.

24 2. David Dickens, EVP / Balance Sheet Management, US Central  
25 Credit Union. Head of ALM & Investments. Address unknown. Subjects:  
26 Investment practices at corporate credit unions; NCUA supervision of  
27 investment activities at corporate credit unions.

3. Brad Thomas, SVP / Chief Risk Officer, US Central Credit Union. Address unknown. Subjects: Investment and credit risk management practices at corporate credit unions; NCUA supervision of credit risk management at corporate credit unions.

**E. Issuers and underwriters of MBS**

1. Individuals who spoke for issuers and underwriters of MBS in sales activities directed at WesCorp. Their names and addresses are currently unknown to Burrell, but the NCUA, as part of its process of suing such issuers and underwriters on behalf of WesCorp and other corporate credit unions, doubtlessly has assembled a list of their names, addresses and periods of sales activity directed at WesCorp.

**F. Counterclaims**

1. Randy Moore, Partner, Moore, Brewer & Burbott APC, 4180 La Jolla Village Dr. #540, La Jolla, CA 92037, telephone: (858) 626-2881. Subjects: Tender of insurance claim to CUMIS; WesCorp's (and NCUA's) failure to provide adequate insurance for WesCorp's officers and employees; WesCorp Policy 21.

2. Carol Cole, CUNA Mutual Group, 591 Mineral Point Road, Madison, WI 53701, telephone: (608) 238-5851 ext. 7713. Subjects: WesCorp's failure to provide adequate insurance for its officers and employees.

1           **II.     DOCUMENTS, ELECTRONICALLY STORED**  
2                   **INFORMATION (“ESI”) AND TANGIBLE THINGS THAT**  
3                   **MAY BE USED TO SUPPORT BURRELL’S DEFENSES**  
4                   **AND COUNTERCLAIMS**

5           Pursuant to Rule 26(a)(1)(A)(ii) of the Federal Rules of Civil Procedure,  
6 Burrell states that he is informed and believes that the following documents,  
7 ESI and tangible things (very little of which is in Burrell’s possession, custody  
8 or control, but all of which should be in the NCUA’s possession, custody or  
9 control) are likely to have discoverable information that he may wish to use to  
10 support his defenses and/or his counterclaims:

11           **A.     Hard copy documents**

12           All of the following categories of hard copy documents should be in the  
13 possession, custody and control of the NCUA unless the NCUA has permitted  
14 spoliation (i.e., all existed at WesCorp when the NCUA took over WesCorp in  
15 March 2009). Burrell is informed and believes that many also existing in the  
16 form of ESI and that the NCUA has converted many more into ESI since  
17 March 2009. Burrell has copies of a smattering of these documents:

- 18           1.     The monthly ALCO books (minutes from the prior ALCO &  
19 ALSC meeting were included in each book).
- 20           2.     The monthly Board books (minutes from the prior Board meeting  
21 were included in each book).
- 22           3.     The monthly Supervisory Committee meeting agendas,  
23 informational/presentation materials and the minutes of each meeting.
- 24           4.     Minutes of the Senior Policy Council, Executive Committee and  
25 leadership Team meetings.
- 26           5.     The individual Security Files. These will have all the pre-  
27 purchase materials, collateral and structure information, work papers, ratings  
28

1 information, formal Board requests for initial approval and annual renewals  
2 and ongoing due diligence. Burrell is informed and believes that these have  
3 already been copied and converted to ESI. Each hard-copy file would be  
4 several inches thick. These files should be complete; each year the NCUA  
5 checked the completeness of each file as part of the annual examination  
6 process. The only things missing from the hard-copy securities files might  
7 potentially be some of the less important electronic communications, primarily  
8 via Bloomberg e-mail, between the underwriting/sales staff at the underwriters  
9 and staff in WesCorp's Portfolio Group and Investment Credit Services.

10 6. Copies of all work papers and communications relating to action  
11 plans submitted to the Board and the NCUA relating to downgraded securities.  
12 These materials may be stored in the individual securities folders and/or filed  
13 separately.

14 7. WesCorp Corporate Policies relating to Asset/Liability  
15 Management - primarily Funds Management (Liquidity), Interest Rate Risk  
16 Management, Investment Portfolio Activity, Risk Modeling and Credit Risk  
17 Management; also WesCorp Policy 21, re: indemnification and insurance.

18 8. WesCorp Department procedures relating to the policies  
19 described in (7) above.

20 9. The detailed annual business plan books (3-inch ring binders),  
21 supplied to the Board and staff each year.

22 10. Agendas and informational/presentation materials utilized at the  
23 annual off-site Board planning meetings.

24 11. The files containing the periodic reviews of WesCorp by  
25 Moody's Investor Services and Standard and Poor's.

26 12. Copies of the bi-annual (at one point annual), third party  
27 asset/liability risk assessment commissioned by the Risk Assessment  
28

1 Department on behalf of the Supervisory Committee.

2 13. A copy of the third party review by Protiviti commissioned by  
3 Finance and Accounting in 2008.

4 14. Copies of the annual Examination Reports and presentation  
5 materials provided to the WesCorp Board and executive staff when the NCUA  
6 reported their findings at a regularly scheduled WesCorp Board meeting.

7 15. NCUA work papers underlying the Examination Reports  
8 regarding aspects of the examination relating to the issues raised by the SAC.  
9 The Examination Reports routinely praised aspects of WesCorp's business and  
10 investment practices that the SAC criticizes.

11 16. All communications with the NCUA relating to Expanded  
12 Authorities, risk management (interest rate risk, liquidity risk and credit risk),  
13 special approvals/exceptions to NCUA regulation, infringements of risk limits,  
14 Letters of Understanding (LUA), Documents of Record (DOR) and Other  
15 Examiner Findings (OEF) relating to risk management.

16 17. Information/presentation materials utilized at the Board Training  
17 sessions and at orientation sessions for new directors and officers and the  
18 WesCorp "Ambassadors."

19 18. Communications, working papers and audit reports generated in  
20 connection with the annual external audit relating to the securities portfolio.

21 19. WesCorp's insurance policies and communications with the  
22 insurance carrier regarding coverage, policy applications and policy renewals.

23 20. Communications with the NCUA regarding indemnification.

24 21. Documents reflecting the NCUA's valuation of MBS possessed  
25 by WesCorp as of the imposition of the conservatorship.

26 22. Documents reflecting the NCUA's disposition of, or attempts to  
27 sell or securitize, MBS that WesCorp had owned as of the imposition of the  
28



1 conservatorship.

2       **B.       Electronically stored information in the possession, custody**  
3       **or control of the NCUA**

4       All of the following categories of ESI should be in the possession,  
5 custody and control of the NCUA unless the NCUA has permitted spoliation  
6 (i.e., all existed at WesCorp when the NCUA took over WesCorp in March  
7 2009). Burrell has copies of a smattering of these categories of ESI:

8       1.       Email: The IT Department at WesCorp backed up the MS  
9 Outlook server for wescorp.org on a daily basis.

10       2.       Bloomberg Mail: Much of the communication with the Wall  
11 Street investment banks about the MBS investments at issue in this case was  
12 conducted through Bloomberg Mail. Burrell is informed and believes that the  
13 NCUA has collected this ESI.

14       3.       On-site NCUA examiners at WesCorp had their own server and  
15 access to ESI at WesCorp. ESI reflecting what they generated and what they  
16 saw at WesCorp (and what they said to the NCUA about WesCorp and its  
17 MBS) should exist and should be produced.

18       4.       The IT Department remotely backed up whatever was in the  
19 Startup directory and Desktop on each PC connected to the Network.

20       5.       Each Business Unit at WesCorp was provided with a Network  
21 drive which was backed up on a daily basis by the IT Department. Those  
22 drives were only accessible by staff in the specified business unit. For  
23 example, Investments and Risk Assessment each had their own separate  
24 system drives. The NCUA should have preserved information on those drives  
25 and should produce those archives, to the extent they are relevant.

26       6.       At WesCorp there was a common shared network drive that was  
27 used for information that was shared between different business units. This  
28

1 was also backed up by the IT Department. The NCUA should have preserved  
2 information on that drive and should produce those archives, to the extent they  
3 are relevant.

4 7. The IT Department managed the backup and archiving for all  
5 internal and third party systems and key applications. The primary system  
6 relating to the budget was the WesCorp (internally created) Budgeting System.  
7 The third party Clarity budgeting system was implemented in 2008. The  
8 primary systems relating to security purchases would be the WesCorp  
9 (internally created) Investment Accounting (IA) system, the QRM ALM  
10 system, Bloomberg and RiskSpan Velocity. The WesCorp IA system was  
11 replaced by SunGard InTrader in 2008. Velocity replaced Derivative  
12 Solutions which previously replaced Salomon YieldBook. The NCUA should  
13 have preserved and should produce these systems, to the extent they are  
14 relevant.

### 15 III. COMPUTATION OF DAMAGES

16 Pursuant to Rule 26(a)(1)(A)(iii) of the Federal Rules of Civil  
17 Procedure, Burrell states that he claims no damages with respect to the SAC  
18 (because he is a defendant, not a plaintiff) but does claim, and computes, his  
19 damages with respect to his Counterclaims as follows:

20 On February 1, 2011, in his claim, Burrell provided the NCUA's  
21 Liquidating Agent with calculations and copies of supporting documents for  
22 his defense costs, and costs of seeking indemnification, through January 2011.

23 In September 2011, Burrell will provide the NCUA's Liquidating Agent  
24 with calculations and copies of supporting documents for his defense costs,  
25 and costs of seeking indemnification, through August 2011.

1 Periodically in the future, Burrell will provide similar updates and  
2 supporting documents, insofar as he incurs and pays additional defense costs  
3 and costs of seeking indemnification.

#### 4 IV. INSURANCE

5 Pursuant to Rule 26(a)(1)(A)(iv) of the Federal Rules of Civil  
6 Procedure, Burrell states as follows:

7 WesCorp purchased a “directors and officers” insurance policy from  
8 CUMIS Insurance Society, Inc. (“CUMIS”), Special Insurance Package No.  
9 065468-22 (the “CUMIS Policy”), effective January 1, 2009. The CUMIS  
10 Policy covered Burrell.

11 On December 11, 2009, Burrell then-counsel, Randy Moore (“Moore”),  
12 sent a letter to CUMIS tendering the defense of this suit under the CUMIS  
13 Policy.

14 On December 28, 2009, CUMIS sent a letter to Mr. Moore denying that  
15 CUMIS has a “duty to defend” under the CUMIS Policy and denying coverage  
16 for the claim. CUMIS agreed that the allegations of the complaint – breach of  
17 duties in the discharge of Burrell’s and others’ duties as directors and  
18 employees of WesCorp – were the type of “claims” for “losses” related to a  
19 “wrongful act” that are covered by the terms of the Policy. But CUMIS  
20 claimed that it does not have a “duty to defend” under the CUMIS Policy,  
21 which states that “CUMIS has no duty to defend . . . or to pay any ‘defense  
22 costs’ prior to the final adjudication or disposition of any ‘claim’ . . . .”  
23 CUMIS also refused to cover the claim against Burrell on the ground that the  
24 CUMIS Policy contains an “investment exclusion” which provides that  
25 “CUMIS will not be liable to make any payment for ‘loss’ in connection with  
26 or arising out of any ‘claim’ . . . . Based upon or resulting directly or  
27 indirectly from investments . . . [or] investment or trading losses . . . .”  
28

CUMIS agreed to pay only an aggregate amount of \$100,000 of defense costs for all of the insured defendants under the CUMIS Policy pursuant to an exception to the “investment exclusion” allowing for payment of such costs subject to a \$500,000 retention or deductible.

The CUMIS Policy aside, Burrell has no other insurance applicable to this case.

As alleged in Burrell’s Fifth Counterclaim, WesCorp, hence NCUA, failed in its duty to Burrell to provide adequate insurance coverage for Burrell.

Burrell understands and believes that NCUA already has a copy of the CUMIS Policy and the correspondence referred to above, and it certainly has been served with the Counterclaim. If the NCUA lack copies of anything referred to in this part IV, Burrell stands ready to provide such copies upon request.

Dated: September 16, 2011.

PILLSBURY WINTHROP SHAW  
PITTMAN LLP  
REYNOLD L. SIEMENS #177956  
Email: [reynold.siemens@pillsburylaw.com](mailto:reynold.siemens@pillsburylaw.com)  
725 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017-5406

PILLSBURY WINTHROP SHAW  
PITTMAN LLP  
BRUCE A. ERICSON #76342  
Email: [bruce.ericson@pillsburylaw.com](mailto:bruce.ericson@pillsburylaw.com)  
MARLEY DEGNER #251923  
Email: [marley.degner@pillsburylaw.com](mailto:marley.degner@pillsburylaw.com)  
50 Fremont Street, Post Office Box 7880  
San Francisco, CA 94120-7880

By /s/ Bruce A. Ericson  
Bruce A. Ericson

Attorneys for Defendant  
ROBERT JOHN BURRELL